

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 23, 2009**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 23, 2009 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. The following Board members were present: Chair John Cross, Russ Parmele, Rick Pinto, Scott Brewington, Bill Strickland and Ryan Shell. Staff present were Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, and Jerry Kontos, City Attorney's Office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Vice Chair Cross also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Parmele moved to approve the minutes of the February 23, 2009 meeting, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Mr. Howard and Ms. Averett were sworn in as to all testimony given by them at today's meeting.

APPEAL FROM HISTORIC PRESERVATION COMMISSION

Chair Cross stated that he and Mr. Brewington would be recused from this matter due to conflict of interest issues.

- (a) **BOA-09-05: 911 MOREHEAD AVENUE John and Christine Penc appeal the decision of the Historic Preservation Commission to deny a Certificate of Appropriateness (Number1084) in reference to replacing some exterior wood trim/soffit with vinyl material on the existing building. The first appeal was heard at the September 23, 2008 meeting and remanded back to the Historic Preservation Commission. Section 30-4-4.2(E)5), Present Zoning-RM-26, BS-8, Cross Street-South Mendenhall Street. (CONTINUED)**

Darrell A. Fruth, Attorney, representing John and Christine Penc, stated that he is requesting a continuance of this matter to the April meeting. He explained that Derek Allen has been the representing attorney in this matter and is out of town and feels that the Board would benefit from having him present the case and pertinent information.

Mr. Strickland moved to continue the matter to the April meeting, seconded by Mr. Parmele. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Shell, Parmele, Strickland. Nays: None. Abstained: Cross and Brewington.)

OLD BUSINESS: None

NEW BUSINESS

REHEARING

- (a) **BOA-09-04: 7 ARBOR CROSSING COURT Embrace Enterprises, LLC requests a rehearing based on new evidence concerning a request for a Special Exception from the minimum spacing requirement at 7 Arbor Crossing Court. Section 30-9-6.9(F), Present Zoning RS-9, BS 88, Cross Street-Amos Drive. (DENIED)**

Rawls Howard stated that the applicant through his Attorney, Frankie T. Jones, is requesting a rehearing of the previous case, which was heard at the December 22, 2008 meeting. A rehearing may be granted based on Section 30-9-6.9(F) *Conditions of Rehearing* which states: "The Board shall not be required to hear an appeal or application previously denied if it finds that there has been no substantial change in conditions or circumstances bearing on the appeal or application." City of Greensboro Development Ordinance, Section 30-9-6.9(F) *Conditions of Rehearing*: The Board shall not be required to hear an appeal or application previously denied if it finds that there has been no substantial change in conditions or circumstances bearing on the appeal or application. The applicant has located a family care home at 7 Arbor Crossing Court. It is approximately 262 feet from an existing family care home, which is located at 3601 Amos Drive. The homes are required to be separated by a minimum radius of ¼ mile, which is 1,320 linear feet. This case was heard at the December 22, 2008 meeting. Based on the evidence submitted, the Special Exception request was denied. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

In response to a question, Counsel Kontos stated that the appeal was not submitted within the 15 day period from the original meeting and there is a procedural issue to be dealt with in this matter.

Frankie T. Jones, Attorney for the appellant, 4203 Cypress Grove Lane, was sworn in and stated that there were several discussions with staff and legal in preparation for their case. Through those conversations it was determined that it was best to apply for a re-hearing because at this point, an appeal to Superior Court would be on the record. That appeal would be severely hampered because there was a legal standard that was not addressed. Typically the framework for analyzing an application for a Special Exception is subject to the two-prong analysis that was performed in the original hearing. In the UDO section, specifically pertaining to family care homes, there is additional language that has been provided to the Board members by memo. That language says, "Unless a Special Exception is granted by the Board of Adjustment for reduced separation upon a showing that such separation will not promote the clustering of homes which could lead the resident persons to cloister themselves and not interact with community mainstream." They hope to be able to present evidence on this specific standard.

Chair Cross asked if the issue is that the Board did not make the affirmative finding that this would not promote clustering of homes.

Attorney Jones stated that it is felt that there was no finding of that issue in the original meeting as it was not addressed.

In response to a question, Counsel Kontos stated that the Board is not required to address a re-hearing but they may choose to do so if they desire.

There was no one speaking in opposition to the re-hearing.

Discussion by the Board members consisted of Chair Cross stated that he would like to preview a change in the review process to 6 months instead of the current 15 days to allow more time for anyone asking for a re-hearing to be able to obtain their information. Mr. Brewington stated that the issue relative to no new facts, it seems that the Board members concur that is not at issue for their discussions pertaining to this particular matter.

Mr. Pinto moved that in BOA-09-04, #7 Arbor Crossing Court, upon petition of the applicants for a re-hearing be denied based that the Board regulations require a petition be filed within fifteen (15) days of the original decision and in this case, it was not; and that there was no new evidence or forecast of new evidence which was not available at the original hearing which would be available at the re-hearing. Failure of the two conditions set forth in Section 30-9-69(f) of the Greensboro Code of Ordinances, the request is denied, seconded by Mr. Brewington. The Board voted 6-0 in favor of the motion. (Ayes: Cross, Brewington, Pinto, Shell, Parmele, Strickland. Nays: None.)

INTERPRETATION

- (a) **BOA-09-06: 5502 ROBINRIDGE ROAD John Steelman requests an interpretation concerning the height of an antenna located on a radio/ham tower, which is higher than 50 feet. Section 30-5-2.73 and Table 30-4-6-1, Present Zoning-RS-12, BS-166, Cross Street-New Garden Road.**

Rawls Howard stated that the applicant is requesting an interpretation concerning the height of a residential accessory use radio/ham tower. The property is located on the north side of Robinridge Road east of New Garden Road on zoning map block sheet 166. Tax records

indicate the dwelling was built in 1982. The current owners of the property located at 5502 Robinridge Road are Lawrence and Vicki Strasser. The applicant, Mr. Steelman is requesting an interpretation concerning the maximum height of the antennae located at the top of the radio/ham tower. The tower is approximately 47 feet tall and the antenna is an additional 9 feet tall. The total height for the tower and antenna is 56 feet. Ordinance Section 30-5-2.73 (C) *Height* states: "The satellite dish and TV or radio antennae tower may exceed the maximum height of the zoning district with approval of a Special Use Permit." Table 30-4-6-1: The RS-12 zoning district, as well as all the single family districts, prohibits structures to exceed a maximum height of 50 feet. Staff has concluded that the antennae attached to the tower is not part of the tower structure, thus no Special Use Permit is required. Attached are field photos that show the location of the tower. It is located behind the dwelling and near the side property line. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

John Steelman, 5503 Greenlee Road, stated that he lives adjacent to 5502 Robinridge Road. On this property, the property owner has installed a ham radio tower and antenna which is over 50 feet in height and is very intrusive and unsightly in the neighborhood. He also presented handouts for the Board members' review which consisted of a survey of the property. He pointed out that his rear yard abuts the rear yard of Mr. Strasser's property. Photos of the view from his yard to the abutting rear yard were also provided. He stated that ham radio towers and antennas are not addressed in the ordinance and are excluded from the nearest wireless telecommunication tower definition. He is asking for an interpretation on what is tower and what is antenna.

Chair Cross pointed out that the Board is not to make a determination on whether the tower itself is 47 feet or 51 feet, but only to interpret whether the antenna constitutes part of the height.

Brian Kerns, 1207 Condor Drive, was sworn in and stated that his property also backs up to Mr. Steelman's property and stated that the height of the tower is well above 50 feet and felt that these things should be monitored. He is opposed to having this tall tower in his neighborhood.

Speaking in opposition, Lawrence Strasser, 5502 Robinridge Road, was sworn in and stated that he is a decorated veteran of the NY City Police Department and has been an active ham operator for almost 54 years and has been involved in community service by helping medical traffic, helped save lives during hurricanes and other natural disasters. Much of this activity would not be possible without the use of an antenna. In June 2007, the General Assembly of the North Carolina session, law 2007-147 House Bill 1340, Governor Easley passed an ordinance 1608-383.3 that states: "Reasonable accommodation of amateur radio antennas, the City Ordinance based on health, safety or aesthetic considerations that regulates the placement, screening or height of the antennas or support structures of amateur radio operators must reasonably accommodate radio communications and must represent the minimum practical regulation necessary to accomplish a purpose of the City. A City may not restrict antenna or antenna fore structures of amateur radio operators the heights of 90 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety or aesthetic objective of the

City.” He presented this bill for the Board’s records. He pointed out that in the case of a natural disaster, he is probably the only one in the entire neighborhood that has back-up power and he can provide communication.

Mr. Steelman returned for rebuttal and stated that the FCC and Govenor Easley have both endorsed ham radio operators and supported their cause but he pointed out that localities are supposed to be reasonable accommodations and not stuck in the middle of a neighborhood and be overbearing and intrusive. He feels that this particular tower and antenna are a bit out of place for this residential neighborhood.

Discussion by the Board members:

Chair Cross stated that the Board is to interpret what the City intended when they passed this regulation and then if someone feels the regulation is contrary to state law, they should go to Superior Court and challenge it there.

Mr. Strickland stated that the interpretation should be flexible enough to change from situation to situation in some cases depending on what might be attached to the structure. Based on the historical interpretation, he feels that there is no violation.

Rawls Howard pointed out that there is FCC protection in these matters.

After much discussion, Mr. Pinto moved that in BOA-09-06, 5502 Robinridge Road, upon a request for interpretation of Ordinance 30-5-2.73, Satellite dishes, tv and radio antenna towers and specifically interpreting subsection C of that ordinance, whether the 50 foot height limitation includes or does not include an antenna on top of a radio antenna tower within that 50 feet, it would be this Board’s interpretation that the tower structure itself must not exceed 50 feet and that any antenna attached to the tower would not be included in the height measurement. seconded by Mr. Brewington. The Board voted 5-1 in favor of the motion. (Ayes: Cross, Brewington, Pinto, Parmele, Strickland. Nays: Shell.)

ABSENCES:

The absence of Mr. Turner and Mr. Pearce was acknowledged.

ADJOURN:

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There being no further business before the Board, the meeting was adjourned at 3:21 p.m.

Respectfully submitted,

John Cross, Chair
Greensboro Board of Adjustment

JC/jd